HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

–

–

WRIT APPEAL No.259 of 2007

Between:

Katta Sivaiah
And others.

… Appellants

AND

M.Ranga Rao and others.

… Respondents

; JUDGMENT :

Counsel for the appellants : Shri Bobba Vijayalaxmi

Counsel for respondents 1 to 3 : Shri U.Muralidhar Rao

Counsel for Respondents 4 to 8: G.P.for Cooperation.

Dated: June, 2007

–

–

Per C.V.NAGARJUNA REDDY, J.

This writ appeal is filed by respondents 7 to 15 in W.P.No.4925 of 2007, against the order of the learned Single Judge who, while declining to modify the order dated 13.3.2007, directed postponement of issuance of election notification till District Collector, Prakasam (Respondent No.6) examines the issues raised in the writ petition afresh.

Respondents 1 to 3 filed W.P.No.4925 of 2007 seeking multiple reliefs concerning a number of issues pertaining to the holding of elections to the Managing Committee of Andhra Pradesh Tobacco Growers Cooperative Union Limited, Ongole (Respondent No.5). These issues include non-holding of elections before the completion of the term of the elected body on 15.3.2006, appointment of respondent No.4 as person-in-charge at the behest of the local M.L.A., respondent No.9, illegal enrolment of new members who are growers of "burly tobacco" who are stated to be not eligible to become members, inadequacy of time granted by the person-in-charge to the members of the union for payment of additional share capital amount of Rs.200/- (as per Rule-18(a) of the Andhra Pradesh Cooperative Societies Rules) and failure of the person-in-charge to consider the petitioners' representations dated 17.2.2007 and 23.2.2007.

Alongwith the writ petition the petitioners filed W.P.M.P.No.6304 of 2007 in which the petitioners sought for interim direction to dispose of the representations dated 17.2.2007 and 23.2.2007 sent by respondent No.4 person-in-charge. The

learned Single Judge by an order dated 13.3.2007 directed the District Collector, Prakasam to consider the objections of the writ petitioners – respondents 1 to 3 before finalization of voters list. The appellants then filed W.P.M.P.No.7129 of 2007 to implead them as respondents 7 to 15 in the writ petition. They have also filed a petition to vacate the interim direction which was registered as W.V.M.P.No.752 of 2007.

In the counter affidavit filed by the appellants they have raised two objections to the maintainability of the writ petition, namely, 1) the writ petition filed without making the members whose admission is sought to be invalidated, parties to the writ petition, is not maintainable, and 2) that the election process having already been commenced, the petitioners can only avail the alternative remedy of filing an election petition under Section 61(3) of the Andhra Pradesh Cooperative Societies Act 1964 (for short 'the Act') and that the writ petition under Article 226 of the Constitution of India is not an appropriate remedy.

The learned Single Judge however, by his order dated 23.2.2007 while declining to vacate the interim order, modified the said order as already mentioned above. As a result of the order of the learned Single Judge the election which was scheduled to take place on 8.4.2007 has got postponed. Feeling aggrieved by the said order, the impleaded respondents 7 to 15 in the writ petition filed the present writ appeal.

Heard Smt.Bobba Vijaylakshmi, learned counsel for the appellants, Sri U.Muralidhar Rao, learned counsel for respondents 1 to 3 and the learned Government Pleader for Cooperation for

respondents 4 to 8.

Learned counsel for the appellants submitted that though the objections to the maintainability of writ petition was specifically raised before the learned Single Judge, he interfered with the election process, without adverting to and dealing with the objections raised by her. The learned counsel placed reliance on the judgment of the Supreme Court in **Shri Sant Sadguru Janardhan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha Vs. State of Maharashtra**[1], a Judgment dated 7.2.2006 of this Court to which one of us (the Chief Justice) is a party in **Chinnagottigallu Primary Agricultural Cooperative Credit Society Vs Y.Narayana Reddy and Others** in Writ Appeal No.1968 of 2005 and Batch, and also a judgment dated 28.4.2006 of a learned Single Judge in W.P.No.21813 of 2005 and batch.

The learned Government Pleader supported the contentions of the learned counsel for the appellants and submitted that the very writ petition filed after the commencement of the election process is wholly misconceived and that as a result of the order passed by the learned Single Judge directing postponement of issuance of election notification, the whole election schedule has got disturbed, whereby the 5th respondent union is denied to have its affairs conducted by an elected body.

Opposing the contentions of the learned counsel for the appellants, the learned counsel for respondents 1 to 3 submitted that the learned Single Judge having regard to the peculiar facts of the case directed postponement of the election and gave

appropriate directions to the District Collector, Prakasam district to examine the various contentions raised by the writ petitioners before issuance of election notification. He therefore submits that the order of learned Single Judge does not suffer from any error so as to warrant our interference in exercise of Letters Patent Jurisdiction.

We have given our serious thought to the respective contentions of the learned counsel. Since the main writ petition is pending, we do not propose to examine various issues raised by the learned counsel on merits, because that is likely to prejudice the interest of either party in the writ petition.

A perusal of the order of the learned Single Judge shows that he has not adverted to the objections raised by the learned counsel for the appellants on the very maintainability of the writ petition for failure of the writ petitioners to implead the newly enrolled members of the society. One of the reasons which prompted the learned Single Judge to direct postponement of the elections is admission of 2524 new members despite the protest made by the founder members and one of the main reliefs sought for in the writ petition is to declare the action of the person-in-charge in enrolling new members without any manner of right as illegal, arbitrary and violative of provisions of the Act and the Rules made there under. In our considered view, the learned Single Judge at the threshold should have examined the feasibility of entertaining the writ petition and interdicting the election process without the newly enrolled members being parties to the

writ petition.

A Division Bench of this Court in **Chinnagottigallu Primary Agricultural Cooperative Credit Society Vs Y.Narayana Reddy and Others** invalidated a number of orders passed by a learned Single Judge whereunder he interfered with the process of elections by giving directions to the official respondents therein to conduct elections to Primary Agricultural Cooperative Credit Societies on the basis of the pre-revised voters list by excluding the newly admitted members from the revised voters list. In this context it is apposite to extract to the relevant portion of the judgment:

> "We have given serious thought to the respective arguments. In our opinion, it is not necessary to decide the objection of the appellants to the maintainability of the writ petitions on the ground of availability of alternative remedy of election petition because we are convinced that the orders under challenge are liable to be set aside only on the ground of non-impleadment of the persons who were likely to be affected by the direction of the learned Single Judge. The question whether the action of the Secretary/Person-in-Charge to induct new members was contrary to law and whether such persons could participate in the process of election could not have been decided by the learned Single Judge without hearing the newly inducted members. The order passed by the learned Single Judge for holding election by excluding the newly elected members directly affects the rights of the newly inducted members and, in our considered view, no order prejudicially affecting them could have been passed by the learned Single Judge without directing the writ petitioners to implead or at least some of them as party respondents and giving them reasonable opportunity of hearing. The fact that number of such persons was very large did not absolve the writ petitioners of their obligation to implead necessary parties.
>
> In **Prabodh Verma v. State of U.P.**[2] a three Judges Bench of the Supreme Court considered the issue of

maintainability of the writ petition in the absence of necessary parties and held as under:

> "A High Court ought not to hear and dispose of a writ petition under Art.226 without the persons who would be vitally affected by its judgment being before it as respondents or at least some of them being before it as respondents in a representative capacity if their number is too large to join them as respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties.
>
> Where the shikshak sangh, representative body of teachers appointed in educational institutions run by local bodies and private management filed a writ petition to challenge validity of U.P. Ordinance No.22 of 1978, but did not make Reserve Pool teachers who were to be deprived of their chance of appointment in vacancies in the post of teachers in such institution, in case of success, respondents, it was held, that High Court ought not to have proceeded to hear and dispose of the writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition or at least some of them being made respondents thereto in a representative capacity as the number of the reserve pool teachers was too large and, had the petitioners refused to do so, to dismiss that writ petition for non-joinder of necessary parties."

Similar views have been expressed by the Supreme Court in **Udit Narayan Singh v. Board of Revenue**[3], **Sukhpal Singh v. Punjab State Agrl. Marketing Board**[4], **Ishwar Singh v. Kuldip Singh**[5], **Ram Swarup v. S.N. Maira**[6], **Khetrabasi Biswal v. Ajay Kumar Baral**[7], **Ramarao v. All India Backward Class Bank Employees Welfare Assn.**[8]. By applying the ratio of the aforementioned judgments to the facts of these cases, we hold that the orders of the learned Single Judge are liable to be set aside only on the ground that the petitioners have not impleaded the affected persons who, as mentioned above,

> are necessary parties. However, we feel that it will not be appropriate to non-suit the writ petitioners (private respondents herein) only on the ground of non-impleadment of the necessary parties and the ends of justice would be met if an opportunity is given to them to do so.
>
> In the result, Writ Appeal No.1973 of 2005 is allowed. The order of the learned Single Judge is set aside and Writ Petition No.20905 of 2005 is remanded for fresh adjudication. The writ petition may be listed before the Single Judge on 13-3-2006. The writ petitioners shall be free to amend the writ petition and seek impleadment of the newly inducted members or at least some of them as party respondents. They shall also be free to make a prayer for quashing of the result of the election held during the pendency of the writ appeal."

The facts of the present case are also more or less similar wherein, as already noted above, one of the reliefs sought for is to declare admission of new members by the person-in-charge as illegal and none of the persons whose admission is questioned is made a party. Though the learned Single Judge has left all the issues to be adjudicated by the District Collector, without directing deletion of the newly enrolled members from the voters list, in our view the order under appeal is still unsustainable as the learned Judge in the absence of the newly enrolled members and without hearing them ought not to have granted any direction which may ultimately keep their admission into the society and right to participate in the election process in jeopardy.

Learned counsel for the respondents 1 to 3 vehemently contended that the person-in-charge has no power to admit new members into the society and that such a power is vested only with the duly elected managing committee. In support of his contention, he relied upon the judgments of the Supreme Court in

P.Ramegowda Vs. R.Krishnamurthy[9] and **K.Shantharaj Vs. M.L.Nagaraj**[10]**.** The learned counsel also submitted that the action of the person-in-charge in not giving adequate time to the members of the society to pay the additional subscription of Rs.200/- each was wholly arbitrary and exclusion of all those members who did not pay the amount of subscription within the time stipulated in the notice dated 17.2.2007 as published in Eenadu telugu daily was wholly arbitrary.

As regards the first contention of the learned counsel for respondents 1 to 3, the learned counsel for the appellant contended that the Supreme Court in both the cases cited on behalf of respondents 1 to 3 dealt with the provisions of the Karnataka Cooperative Societies Act and that a learned Judge of this Court in his judgment dated 28.4.2006 in W.P.No.21813 of 2005 and Batch held that there is no provision in the Karnataka Co-operative Societies Act similar to the provision contained in the Andhra Pradesh Act empowering the person-in-charge to exercise all the powers vested in the elected Managing Committee. We are however not inclined to go into the same at this stage for the reason that the writ petitioners (respondents 1 to 3) failed to implead the newly enrolled members as parties to the writ petition and in their absence respondents 1 to 3 cannot raise questions regarding their admission.

As regards the second contention of the learned counsel that adequate time was not given, we are prima facie of the view

that the primary responsibility to pay the minimum share capital under Rule 18 of the A.P. Cooperative Society Rules 1964 (for short the Rules') lies with the members and in the face of the prohibition contained in Section 24 of the Act, the writ petitioners cannot legitimately contend that the defaulters ought to have been given further time to pay minimum share capital.

We also see force in the contention of the learned counsel for the appellants that the High Court exercising the power of judicial review under Article 226 of the Constitution of India would not normally interfere with the election process once set into motion and that preparation of electoral roll is an intermediate stage in the process of election of specified society as held in **Shri Sant Sadguru's** case (1 supra). Though we are not expressing our final opinion on the maintainability of writ petition on the ground of availability of alternative remedy as the main writ petition is pending, we are however of the view that the learned Single Judge committed a serious error in not considering these objections raised by the appellants before interfering with the election process which was commenced with the appointment of election officer and fixing of election schedule by the District Collector, Respondent No.6 vide her proceedings Rc.No.257/2006-B dated 8.3.2007. Learned counsel for the writ petitioners – respondents 1 to 3 cited the judgments of the Supreme Court in **Dwarka Nath Vs. Income Tax Officer Special Circle D-Ward Kanpur**[11], **K.Venkata Ramana Reddy & Others Vs. Secretary, Animal Husbandry and Fisheries Dairy-II, Hyderabad**[12], **JT Ragistrar**

Of Cooperative Societies Kerala Vs. T.A.Kuttappan[13], **Ramchandra Ganpat Shinde Vs. State Of Maharastra**[14], **Shyamdeo PD Singh Vs. Nawal Kishore Yadav**[15], and **A.S.Gahlout and Others V Lt.Governor of Delhi & Others**[16], on various aspects touching the merits of the case. We do not consider it necessary to deal with them in view of the pendency of the writ petition.

In view of the aforementioned circumstances and relying upon the judgment of this Court in Writ Appeal No.1968 of 2005 we set aside the order of the learned Single Judge.

In the result, the writ appeal is allowed and the official respondents are directed to resume the process of election from the stage where it was stopped by re-scheduling the election process. It is however made clear that the writ petitioners are free to seek impleadment of members whose enrolment is questioned or at least some of them as party respondents to the writ petition.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: -06-2007.
mdaa

[1] (2001) 8 SCC 509

[2] AIR 1985 SC 167

[3] AIR 1963 SC 786

[4] (1994) 6 SCC 320

[5] 1995 Supp (1) SCC 179

[6] (1999) 1 SCC 738

[7] (2004) 1 SCC 317

[8] (2004) 2 SCC 76

[9] AIR 1994 SC 85

[10] (1997) 6 SCC 37

[11] AIR 1966 SC 81

[12] 1996 (3) ALD 766

[13] (2000) 6 SCC 127

[14] AIR 1994 SC 1673

[15] (2000) 8 SCC 46

[16] AIR 1994 Delhi 69 FB